

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	File Nos. EB-01-IH-0682
	)	
AMFM Radio Licenses, LLC	)	NAL/Acct. No. 200232080007
	)	Facility ID # 8682
Licensee of Station WWDC-FM,	)	FRN: 0001-6565-86
Washington, D.C.	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: March 15, 2002**

**Released: March 19, 2002**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that AMFM Radio Licenses, LLC (“AMFM” or “licensee”), licensee of Station WWDC-FM, Washington, D.C., has apparently violated 47 C.F.R. § 73.1206, by broadcasting a telephone conversation without first informing the non-licensee party of its intention to do so. Based on our review of the facts and circumstances in this case, we conclude that AMFM is apparently liable for a forfeiture of six thousand dollars (\$6,000).

**II. BACKGROUND**

2. The Commission received a letter dated December 7, 2001, complaining that on November 30, 2001, WWDC-FM air personality Elliot Siegel called the complainant’s home and broadcast the voice mail message from the complainant’s telephone.<sup>1</sup> In its January 7, 2002, response to the staff’s December 19, 2001, letter of inquiry, the licensee acknowledges that the message was broadcast. However, the licensee contends that the message was “generic in content” and that the matter is thus distinguishable from *Citicasters Co.*, 15 FCC Rcd 13805 (Enf. Bur. 2000) (forfeiture paid) (“*Citicasters*”), where we found apparent liability for the broadcast of a conversation between the complainant in that case and another person, which was taken from that complainant’s answering machine.

**III. DISCUSSION**

4. Section 73.1206 of the Commission’s rules provides, in pertinent part, that:

Before recording a telephone conversation for broadcast or broadcasting such a conversation simultaneously with its occurrence, a licensee shall inform any party to the call of the licensee's intention to broadcast the conversation, except where such party is aware or may be presumed to be aware from the circumstances of the conversation that it is being or likely will be broadcast.

<sup>1</sup> The complainant raised additional matters in his complaint and in a supplement dated December 13, 2001. We intend to address those matters separately.

5. In *Citicasters*, we found apparent liability when the licensee accessed a complainant's answering machine without her knowledge or permission and then broadcast a telephone conversation between her and another person as it was recorded on her answering machine without giving her prior notification. In so finding, we acknowledged that Citicasters' conduct was different from the typical Section 73.1206 case, where a station calls a person directly and broadcasts the resulting conversation without giving prior notice. Nevertheless, citing *Amendment of Section 73.1206: Broadcast of Telephone Conversations (Report and Order)*, 3 FCC Rcd 5461, 5463 (1988) ("*Report and Order*"), we concluded that the licensee's actions appeared to be directly contrary to the language of the rule, which requires prior notice before a conversation is broadcast, and that the licensee's conduct was inconsistent with the rule's purpose of protecting parties to telephone conversations. *Citicasters*, at 13806.

6. We believe the instant case warrants the same result. The Commission has stated that "it is reasonable and desirable to retain for individuals the right to answer the telephone without having their voices or statements transmitted to the public by a broadcast station in the absence of prior notice." *Report and Order* at 5463. As *Citicasters* makes clear, that right to answer without having one's voice transmitted to the public exists irrespective of whether the voice broadcast or recorded for later broadcast is live or is lifted from an answering machine. To ensure such privacy rights, the Commission has determined that a broadcast station must give notice of its intent to broadcast the conversation before the transmitting or recording for later transmission of the telephone call. *Report and Order* at 5463. See also *KIDS-TV 6*, 14 FCC Rcd 13351 (Mass Media Bur. 1999). "Conversation" as used in the rule includes any word or words spoken during the call. *Hefstel Broadcasting-Contemporary, Inc.*, 52 FCC 2d 1005, 1006 (1975). The licensee does not dispute that it did not give any notice to the complainant before WWDC-FM broadcast the complainant's voice mail greeting. Hence, we find apparent liability.

7. Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), and Section 1.80(a) of the Commission's rules, 47 C.F.R. § 1.80(a), each state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Communications Act, the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules. See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Based on the evidence before us, it appears that AMFM willfully broadcast a conversation on November 30, 2001, in apparent violation of Section 73.1206 of the Commission's rules, 47 C.F.R. § 73.1206. There is no question that AMFM, through its employees, knew that it broadcast the complainant's voice mail message without having previously informed complainant of its intention to do so.

8. In assessing a monetary forfeiture, we take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D). Those factors include the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>2</sup> The Commission's *Forfeiture Guidelines* set a base forfeiture amount of \$4,000 for broadcasting a telephone conversation without informing the other party of its intention to do so. After considering all the facts and circumstances, we find that an upward adjustment is appropriate. In *Citicasters*, we specifically put AMFM's corporate parent, Clear Channel

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<sup>2</sup> 47 U.S.C. § 503(b)(2)(D). See also The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087, 17100-01 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("Forfeiture Guidelines").

Communications, Inc. ("Clear Channel"), on notice that broadcasting a conversation from an answering machine was prohibited by 47 C.F.R. § 73.1206.<sup>3</sup> We therefore find that a \$6,000 proposed forfeiture is warranted.

#### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>4</sup> and Sections 0.111, 0.311 and 1.80 of the Commission's rules,<sup>5</sup> AMFM Radio Licenses, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$6,000 for willfully violating Section 73.1206 of the Commission's rules.<sup>6</sup>

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the rules,<sup>7</sup> within thirty days of this NOTICE OF APPARENT LIABILITY, AMFM Radio Licenses, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) referenced above and also must note the NAL/Acct. No. referenced above.

11. The response, if any, must be mailed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B443, Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenues and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

13. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail - Return Receipt Requested to AMFM Radio

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<sup>3</sup> Clear Channel is likewise the corporate parent of Citicasters, Co.

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

<sup>6</sup> 47 C.F.R. § 73.1206.

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> See 47 C.F.R. § 1.1914.

Licenses, LLC, 200 East Basse Road, San Antonio, Texas, 78209; with a copy to Christopher L. Robbins, Esquire, Wiley, Rein & Fielding, LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau